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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF INDIANA
 SOUTH BEND DIVISION

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 GERALDINE J. CROCKETT
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 U.S. DISTRICT CRT
 NO. DISTRICT OF IN

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE SELMER COMPANY, L.P.,
 NORTH AMERICAN PHILIPS
 CORPORATION, MACMILLAN, INC.,

Defendants.

Civil Action No.

S89-00348

Chief Judge Sharp

FILED

SEP 28 1993

At _____ M
 GERALDINE J. CROCKETT, Clerk
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF INDIANA

CONSENT DECREE

WHEREAS, Plaintiff, on behalf of the Administrator of the Environmental Protection Agency ("U.S. EPA"), brought this civil action pursuant to Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9606(a) and 9607(a), for recovery of costs incurred by the U.S. EPA in response to the release or threatened release of hazardous substances from the Selmer Site in Elkhart, Indiana, and for injunctive relief to abate and remedy the imminent and substantial endangerment to public health, welfare, or the environment presented by the Selmer Site;

WHEREAS, Defendants have filed Answers to the Complaint denying any and all liability in connection with this action;

WHEREAS, Plaintiff and Defendants, having resolved that the settlement of this matter is in the public interest, have agreed to the entry of this Consent Decree;

NOW THEREFORE, without adjudication of any issues of law or fact, and without admission of liability or wrongdoing on the part of the Defendants, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter raised by the Complaint pursuant to 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. § 9613. The Complaint states a claim upon which the Court can grant relief against Defendants pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a). Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), and 42 U.S.C. § 9613(b).

II. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the undersigned parties and their agents, successors and assigns. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it. Defendants shall provide a copy of this Consent Decree to the contractor(s) hired to perform the work required by this Consent Decree and shall require the contractor(s) to provide written notice of the Decree to any subcontractor retained to perform any part of the work.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Defendants" shall mean The Selmer Company, L.P., North American Philips Corporation, and Macmillan, Inc.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the effective date of this Consent Decree in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII (including, but not limited to, attorneys fees and the amount of just compensation), XI, and Paragraph 64 of Section XVII.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"On-Scene Coordinator" or "OSC" shall mean the person designated by U.S. EPA to coordinate, monitor or direct response activities at the Site pursuant to 40 CFR 300.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States incurred and paid with regard to the Site prior to the effective date of this Consent Decree.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Selmer facility" shall mean the property located at 500 Industrial Parkway, Elkhart, Indiana, as defined in the Work Plan, attached hereto.

"Site" shall mean 1) the Selmer facility and 2) contiguous property where hazardous substances have come to be located as the result of hazardous substance disposal at the Selmer facility.

"State" shall mean the State of Indiana.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean the implementation of the activities described in the Work Plan, this Decree, and any other plans or schedules submitted and approved by U.S. EPA pursuant to this

Decree or the Work Plan, including providing municipal water to residences along Outer Drive, Elkhart, Indiana.

"Work Plan" shall mean the plan, set forth as Appendix 1 to this Decree, for conducting an investigation of the Site and for evaluating remedial action at the Site.

IV. GENERAL PROVISIONS

4. The objectives of the Parties in entering into this Consent Decree are to: 1) protect public health or welfare or the environment by the Defendants undertaking an investigation to determine the nature and extent of contamination by Waste Materials at the Selmer Site and evaluating alternatives for any appropriate remedial action at the Site; 2) reimburse response costs of the Plaintiff; and 3) provide municipal water to residences along Outer Drive, Elkhart, Indiana.

5. Commitment by Defendants

a. Defendants shall finance and perform the Work in accordance with this Consent Decree, the Work Plan, and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Defendants to implement the

requirements of this Consent Decree, the remaining Defendants shall complete all such requirements.

6. Compliance with Applicable Laws, Permits and Approvals

All activities undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the Work Plan. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP. In the event of a conflict in the application of federal, state, or local laws, ordinances and regulations, Defendants shall comply with the more/most stringent such law, ordinance or regulation, unless provided otherwise in writing by the U.S. EPA. Defendants shall be responsible for timely obtaining all state or local permits which are necessary for the performance of any Work hereunder.

V. PERFORMANCE OF THE WORK BY DEFENDANTS

A. Site Investigation

7. Appendix 1 of this Consent Decree provides a Work Plan for conducting an investigation a) to determine the identity, amounts and location of hazardous substances, pollutants or contaminants in the environment at the Selmer Site, and b) to evaluate alternatives for any appropriate remedial action to prevent, mitigate or otherwise remedy any release or threatened release of any hazardous substances, pollutants or contaminants

into the environment at the Site. Appendix 1 is incorporated and made an enforceable part of this Decree.

8. Defendants shall implement all Work detailed in the Work Plan, in accordance with the National Contingency Plan, applicable RI and FS guidance and the requirements of the Consent Decree, including the standards, specifications and schedule contained in the Work Plan.

B. Residential Water Connection

9. Defendants shall arrange for, pay for, and be responsible for, within six months after entry of this Consent Decree, provision of municipal water to residences with drinking water wells along Outer Drive, from Middlebury Street to Toledo Road in Elkhart, Indiana, including:

a. Submittal of an engineering plan developed in accordance with state and local building codes and permitting requirements, detailing the proposed installation of water mains along Outer Drive, between Middlebury Street to the North and Toledo Road to the South, Elkhart, Indiana, to Elkhart Water Department for approval. Once approved by the Elkhart Water Department, Defendants shall provide for installation of water mains pursuant to the approved plan.

b. Installation of the service connections (or "taps"), in compliance with all state and local building codes, permit requirements and any other City of Elkhart materials or performance specifications, from the water mains to the residential property lines;

c. installation of water lines from the property lines at Outer Drive to the residences, connecting the residences to said water lines. This installation shall be performed by a licensed plumber.

d. restoration of public and private property which is damaged or disturbed by this work, including landscaping and replacement of asphalt, curbs, gutters and sidewalks.

C. Selection of Supervising Contractor

10.a. All aspects of the site investigation to be performed by Defendants pursuant to the Work Plan and this Consent Decree shall be under the direction and supervision of a Supervising Contractor, WW Engineering and Science, which Defendants selected and U.S. EPA has authorized to proceed. All aspects of the Residential Water Connection to be performed by Defendants pursuant to this Consent Decree shall be under the direction and supervision of a Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of this Consent Decree, Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the Residential Water Connection. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Defendants propose to change a Supervising Contractor, Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Defendants in writing. Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Defendants may seek relief under the provisions of Section XIV (Force Majeure) hereof.

VI. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

11. Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to

Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the Work Plan and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree.

Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Defendants in implementing this Consent Decree. In addition, Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Work Plan for quality assurance monitoring. Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

12. Upon request, the Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter

notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Defendants' implementation of the Work.

13. Defendants shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

14. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

VII. ACCESS

15. Commencing upon the date of lodging of this Consent Decree, the Defendants agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendants or their agents, consistent with Section XX; and
- g. Assessing Defendants' compliance with this Consent Decree.

16. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Defendants, Defendants shall use best efforts to secure from such persons access for Defendants, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Defendants in writing that additional access beyond that previously secured is necessary, Defendants shall promptly notify the United States,

and shall include in that notification a summary of the steps Defendants have taken to attempt to obtain access. The United States may, as it deems appropriate, assist Defendants in obtaining access. Defendants shall reimburse the United States in accordance with the procedures in Section XII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

17. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

VIII. REPORTING REQUIREMENTS

18. In addition to any other requirement of this Consent Decree, Defendants shall submit to EPA two (2) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree to be completed and submitted during the previous month; (d) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and (e) include any

modifications to the work plans or other schedules that Defendants have proposed to EPA or that have been approved by EPA. Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Defendants pursuant to Section XXIX (Termination and Satisfaction). If requested by EPA, Defendants shall also provide briefings for EPA to discuss the progress of the Work.

19. The Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

20. Upon the occurrence of any event during performance of the Work that Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region V, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

21. Within twenty (20) days of the onset of such an event, Defendants shall furnish to Plaintiffs a written report, signed by the Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Defendants shall submit a report setting forth all actions taken in response thereto.

22. Defendants shall submit two (2) copies of all plans, reports, and data required by the Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

23. All reports and other documents submitted by Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Defendants.

IX. SUBMISSIONS REQUIRING AGENCY APPROVAL

24. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Defendants modify the submission; or (e) any combination of the above.

25. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 24(a), (b), or (c), Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 24(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVI.

26. a. Upon receipt of a notice of disapproval pursuant to Paragraph 24(d), Defendants shall, within fourteen (14) days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 27.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 24(d), Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Defendants of

any liability for stipulated penalties under Section XVI (Stipulated Penalties).

27. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section XV (Dispute Resolution).

28. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Defendants invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

29. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree.

In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

X. PROJECT COORDINATORS

30. Within twenty (20) days of lodging this Consent Decree, Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Defendants' Project Coordinator shall not be an attorney for any of the Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

31. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall

have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XI. EMERGENCY RESPONSE

32. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Defendants shall, subject to Paragraph 33, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Defendants shall notify the EPA Emergency Response Unit, Region V. Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable

plans or documents developed pursuant to the Work Plan. In the event that Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XII (Reimbursement of Response Costs).

33. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XII. REIMBURSEMENT OF RESPONSE COSTS

34. Within 60 days of the effective date of this Consent Decree, Defendants shall:

a. Pay to the United States \$445,000 plus interest on that amount for the period April 26, 1991 to the date of payment, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 054Y, U.S.A.O. file number 8900905, and DOJ Case Number 90-11-2-461. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. EFTs must be

received at the U.S. D.O.J. lockbox bank by 11:00 A.M. (Eastern Time) in order to be credited on that day.

35. Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will send Defendants a bill requiring payment that includes an itemized cost summary on an annual basis. Defendants shall make all payments within 30 days of Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 36. The Defendants shall make all payments required by this Paragraph by a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number 054Y and DOJ Case Number 90-11-2-461 in reimbursement of Future Response Costs. The Defendants shall forward the certified check(s) to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Ill. 60673, and shall send copies of the check to the United States as specified in Section XXII (Notices and Submissions) and Chief, Solid Waste and Emergency Response Branch, CS-3T, Office of Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604-3590.

36. Defendants may contest payment of any Future Response Costs under Paragraph 35 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of

receipt of the bill and must be sent to the United States pursuant to Section XXII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 35. Simultaneously, the Defendants shall establish an interest bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Defendants shall send to the United States, as provided in Section XXII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

Simultaneously with establishment of the escrow account, the Defendants shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 35. If the Defendants prevail concerning any aspect of the contested costs, the Defendants shall pay that portion of the costs (plus

associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 35; Defendants shall be paid any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Defendants' obligation to reimburse the United States for its Future Response Costs.

37. In the event that the payments required by Paragraph 34 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 35 are not made within 30 days of the Defendants' receipt of the bill, Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Defendants' receipt of the bill. Interest shall accrue at the rate specified through the date of the Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments under this Section.

XIII. INDEMNIFICATION AND INSURANCE

38. The United States does not assume any liability by entering into this agreement or by virtue of any designation of

Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. If Defendants are not parties to any such claim or cause of action against the United States, the United States will make reasonable efforts to notify Defendants of such claim or cause of action; however, the failure of the United States to give such notice will not affect Defendants' indemnification obligations. The United States shall not be held out as a party to any contract entered into by or on behalf of Defendants in carrying out activities pursuant to this

Consent Decree. Neither Defendants nor any such contractor shall be considered an agent of the United States.

39. Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

40. No later than 15 days before commencing any on-site Work, Defendants shall secure, and shall maintain until EPA's notification of completion of the Work pursuant to Section XXIX (Termination and Satisfaction) comprehensive general liability insurance and automobile insurance with limits of two (2) million dollars, combined single limit naming as additional insured the United States. In addition, for the duration of this Consent Decree, Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of

Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIV. FORCE MAJEURE

41. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendants or of any entity controlled by Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that the Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay

is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region V, within five (5) working days of when Defendants first knew or should have known that the event might cause a delay. Within 5 days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any

claim of force majeure for that event. Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

43. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

44. If the Defendants elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and

mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 41 and 42, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XV. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Defendants that have not been disputed in accordance with this Section.

46. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

47. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Defendants invoke the formal dispute

resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Defendants. The Statement of Position shall specify the Defendants' position as to whether formal dispute resolution should proceed under paragraph 48 or 49.

b. Within fourteen (14) days after receipt of Defendants' Statement of Position, EPA will serve on Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 48 or 49.

c. If there is disagreement between EPA and the Defendants as to whether dispute resolution should proceed under Paragraph 48 or 49, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Defendants ultimately appeal to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 48 and 49.

48. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be

conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 48.a. This decision shall be binding upon the Defendants, subject only to the right to seek judicial review pursuant to Paragraph 48.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 48.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Defendants with the Court and served on all Parties within 30 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if

any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs 48.a.

49. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

1. Following receipt of Defendants' Statement of Position submitted pursuant to Paragraph 47, the Director of the Waste Management Division, EPA Region V, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Defendants unless, within 10 days of receipt of the decision, the Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United

States may file a response to Defendants' notice of judicial appeal.

2. Judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

50. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 58. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XVI. STIPULATED PENALTIES

51. Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 52 and 53 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIV (Force Majeure). "Compliance" by Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements

of law, this Consent Decree, the Work Plan and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

52. a. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1-30 days
5,000	31-60 days
10,000	61 or more days

b. failure to obtain insurance as set forth in paragraph 40;

failure to complete provision of municipal water, as set forth in V.B. of this Consent Decree; and

failure to timely perform, as described in Figure 6 of the Work Plan: completion of installation of soil gas samplers; submittal to EPA of a Phase I draft technical memorandum; completion of soil borings/field screening of soil samples/installation of temporary wells; and submittal to EPA of a Phase II draft technical memorandum or final report.

53. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 18, 19, 20, 21, 22, 23, 26, and 78:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--	--------------------------------

\$ 500	1-30 days
1,000	31-60 days
2,000	61 or more days

54. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

55. Following EPA's determination that Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Defendants written notification of the same and describe the noncompliance. EPA may send the Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Defendants of a violation.

56. All penalties owed to the United States under this section shall be due and payable within 30 days of the Defendants' receipt from EPA of a demand for payment of the penalties, unless Defendants invoke the Dispute Resolution procedures under Section XV (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Ill. 60673, and shall reference CERCLA Number 054Y and DOJ Case Number 90-11-2-461. Copies of check(s) paid pursuant to this Section, and any

accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXII (Notices and Submissions).

57. The payment of penalties shall not alter in any way Defendants' obligation to complete the performance of the Work required under this Consent Decree.

58. Penalties shall continue to accrue as provided in Paragraph 54 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Defendants to the extent that they prevail.

59. a. If Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 55 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

60. No payments made under this Section shall be tax deductible for Federal tax purposes.

XVII. COVENANT NOT TO SUE BY PLAINTIFF

61. In consideration of the Work that will be performed and the payments that will be made by the Defendants under the terms of this consent decree, and except as specifically provided in Paragraphs 62 through 64 of this Section, the United States covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of such Work and for recovery of Past Response Costs at the Site. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 34 of Section XII (Reimbursement of

Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performance by Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Defendants and do not extend to any other person.

62.a. This Consent Decree requires Defendants to conduct an investigation of contamination at the Selmer Site described in Sections IV and V of this Consent Decree and the Work Plan. The Consent Decree does not settle any claim for other relief to which the Plaintiff may be entitled under law for remediation or other response action at the Site. The Plaintiff reserves, and this Consent Decree is without prejudice to, all rights to issue administrative orders or bring judicial action pursuant to 42 U.S.C. §§ 106 and 107, and to take any other administrative or judicial action against any or all Defendants, for such other remedial or response action at the Site.

b. In the event that there is future administrative or judicial action between the Plaintiff and any or all Defendants regarding remedial or response action for the Site pursuant to 42 U.S.C. §§ 106 and 107, the parties stipulate, and shall stipulate in any such future action by the Plaintiff, that the Defendants are liable parties pursuant to §§ 106 and 107 of CERCLA for the disposal, and release from the Selmer facility, of "hazardous substances", including trichloroethylene ("TCE"), still bottoms from the recovery of spent TCE, and sludge from degreasing machines which used TCE, during the period 1965 to 1975. This

stipulation is not intended to be and may not be used as an admission of liability or for any other purpose in any action by any person not a party to this Consent Decree, or by the defendants in this action in this, or in any other proceeding.

63. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 61. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters, including but not limited to, those specified in Paragraph 62(a) and the following:

(1) claims based on a failure by Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred by any federal or state trustee for natural resources and which has, or may in the future, spend funds relating to the Site;

(5) criminal liability; and

(6) liability for violations of federal or state law which occur during or after implementation of the Work.

64. In the event EPA determines that Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Defendants may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that the Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Defendants shall pay pursuant to Section XII (Reimbursement of Response Costs).

65. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVIII. COVENANTS BY DEFENDANTS

66. Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA

Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However, the Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XIX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

67. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

68. With regard to claims for contribution against Defendants for matters addressed in this Consent Decree, the

Parties hereto agree that the Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

69. The Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

70. The Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

71. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not

to sue set forth in Section XVII (Covenants Not to Sue by Plaintiff).

XX. ACCESS TO INFORMATION

72. Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

73. a. Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given

access to such documents or information without further notice to Defendants.

b. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

74. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXI. RETENTION OF RECORDS

75. Until 6 years after the Defendants' receipt of EPA's notification pursuant to Section XXIX (Termination and Satisfaction), each Defendant shall preserve and retain all

records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary, unless remedial action is performed at the Site. Until 6 years after the Defendants' receipt of EPA's notification pursuant to Section XXIX (Termination and Satisfaction), Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work, unless remedial action is performed at the Site. If remedial action is performed at the Site, the Defendants shall preserve and retain such records, and shall instruct their contractors and agents to preserve and retain such records, until 6 years after EPA's notification or certification of completion of remedial action.

76. At the conclusion of this document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to EPA. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the

date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants.

However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

77. Each Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXII. NOTICES AND SUBMISSIONS

78. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall

constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-461

and

Chief, Emergency Response Branch, HSE-5J
Office of Superfund
United States Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

As to the Defendants:

The Selmer Company, L.P.:

Thomas Burzycki
President
The Selmer Company, L.P.
500 Industrial Parkway
Elkhart, Ind. 46516

North American Philips Corporation:

Risa H. Weinstock
Sr. Counsel
North American Philips Corporation
100 E. 42nd Street
New York, NY 10017

Macmillan, Inc.:

Linda M. Bullen
McDermott, Will & Emery
227 W. Monroe St.
Chicago, Ill. 60606-5096

Scott Dennis
WW Engineering & Science
5555 Glenwood Hills Parkway SE
PO Box 874
Grand Rapids, MI 49588-0874

XXIII. EFFECTIVE DATE

79. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIV. RETENTION OF JURISDICTION

80. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XV (Dispute Resolution) hereof.

XXV. COMMUNITY RELATIONS

81. Defendants shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Defendants shall participate in the preparation of such information for dissemination to the public.

XXVI. MODIFICATION

82. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Defendants. All such modifications shall be made in writing.

83. No material modifications shall be made to the Work Plan without written notification to and written approval of the United States, Defendants, and the Court. Modifications to the Work Plan that do not materially alter that document may be made by written agreement between EPA and the Defendants.

84. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

85. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

86. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXVIII. SIGNATORIES/SERVICE

87. Each undersigned representative of a Defendant to this Consent Decree and the Assistant Attorney General for Environment

and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

88. Each Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

89. Each Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXIX. TERMINATION AND SATISFACTION

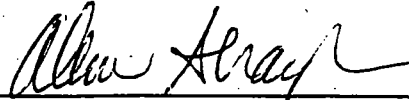
90. The provisions of this Consent Decree shall be deemed satisfied upon receipt by Defendants of written notice from U.S. EPA that Defendants have demonstrated that all of the terms of this Consent Decree, including any additional work, modifications or amendments, but excluding record preservation pursuant to Section XXI, have been completed in accordance with the terms hereof to the satisfaction of U.S. EPA.

SO ORDERED THIS

24

DAY OF

September, 1993.



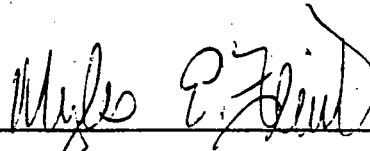
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The Selmer Company, L.P., North American Philips Corporation, and Macmillan, Inc.

FOR THE UNITED STATES OF AMERICA

Date:

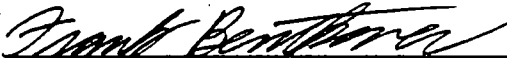
7/21/93



Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date:

6/18/93



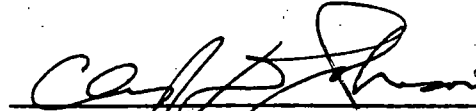
FRANK BENTKOVER
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

United States Attorney
Northern District of Indiana

Date:

8/4/93

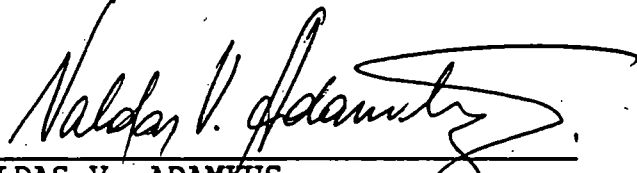
By:



CLIFFORD D. JOHNSON
Assistant United States Attorney
Northern District of Indiana
204 S. Main Street
South Bend, Indiana 46601

Date:

5/24/93



VALDAS V. ADAMKUS
Regional Administrator, Region 5
U.S. Environmental Protection
Agency
77 W. Jackson Blvd.
Chicago, Ill. 60604

FOR THE SELMER COMPANY, L.P.

Date: _____

THOMAS BURZYCKI
President
The Selmer Company, L.P.
500 Industrial Parkway
Elkhart, Ind. 46516

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: _____
Title: _____
Address: _____
Tel. Number: _____

FOR NORTH AMERICAN PHILIPS
CORPORATION

Date: April 30, 1993

Deputy

JOHN F. KELLY
General Counsel and Vice President
North American Philips Corporation
100 E. 42nd Street
New York, NY 10017

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Risa H. Weinstock
Title: Senior Counsel
Address: 100 E. 42nd St., NY, NY 10017
Tel. Number: (212) 850-5232

FOR MACMILLAN, INC.

Date:

5/5/93

John C. Bender

JOHN C. BENDER

Senior Vice President &
General Counsel

Macmillan, Inc.

55 Railroad Ave.

Greenwich, Connecticut 06830

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Maris Kruze, Prentice Hall Legal & Financial Services

Title: Corporate Specialist

Address: 15 Columbus Circle NY, NY

Tel. Number: (212) 373-7581